



Federal Communications Commission
Washington, D.C. 20554

December 6, 2005

DA 05-3148

James K. Davis
Vice President/General Manager
Vero Beach Broadcasting, LLC
1235 16th Street
Vero Beach, Florida 32960

Re: Vero Beach Broadcasting, LLC -- Request for Waiver of Short-Form Deadline for FM Broadcast Auction No. 62

Dear Mr. Davis:

This letter responds to Vero Beach Broadcasting, LLC's ("Vero Beach") August 17, 2005 correspondence,¹ requesting a waiver of the deadline for filing a short-form application (FCC Form 175) to participate in Auction No. 62.² You claim that Vero Beach missed the filing deadline because Vero Beach's offices were destroyed in the Fall of 2004, by Hurricanes Frances and Jeanne, and that during the week that short-forms were due a key manager's office was relocated and records were lost.³ For the reasons set forth below, we deny your waiver request.

To obtain a waiver of the Commission's competitive bidding rules,⁴ an applicant must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that the grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.⁵

¹ Letter from James K. Davis, Vice President/General Manager, Vero Beach Broadcasting, LLC, to Office of the Secretary, Federal Communications Commission (dated August 17, 2005) ("Waiver Request"); email from James K. Davis Vice President/General Manager, Vero Beach Broadcasting, LLC, to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau (dated Nov. 16, 2005).

² See "Auction of FM Broadcast Construction Permits Scheduled For November 1, 2005, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62" *Public Notice*, 20 FCC Rcd 10492 (WTB/MB 2005) ("Auction No. 62 Procedures Public Notice"). Among other things, the *Auction No. 62 Procedures Public Notice* also described procedures and provided instructions for filing short-form applications. *Id.* and Attachment C; see also 47 C.F.R. § 1.2105(a)(1)(i) (short-forms due on date specified by public notice).

³ Waiver Request at 1.

⁴ The Commission's competitive bidding rules are set forth at 47 C.F.R. § 1.2101 *et seq.*

⁵ 47 C.F.R. § 1.925 (standard for rule waiver).

The August 12, 2005, short-form filing deadline was announced in the *Auction No. 62 Procedures Public Notice*, which was released by the Media and Wireless Telecommunications Bureaus (the “Bureaus”) on June 17, 2005.⁶ This announcement provided potential applicants with nearly two months’ advance notice of the filing deadline for short-forms, and provided that applications could be filed at any time during a filing window beginning on July 27, 2005 until the August 12, 2005 deadline.⁷ Potential applicants were also warned that late applications would not be accepted.⁸ Several measures were taken by the Bureaus to facilitate the filing of short-form applications for Auction No. 62. As with other auctions, applicants were able to submit applications via the Internet 24 hours a day; a public auctions seminar was held to familiarize bidders with auction processes, during which, among other things, use of the FCC Integrated Spectrum Auction System was explained and staff members were made available for questions; and the FCC Technical Support Hotline was available to provide prospective applicants with assistance in the use of the FCC’s automated auctions system.⁹

You contend that your business offices were destroyed by hurricanes in the Fall of 2004 and you were forced to operate from temporary facilities without the benefit of office records, computers and internet access “during the disaster.” You further claim that during the week in August 2005, when short-forms were due a “key manager’s office was relocated and records relating to the auction were lost.”¹⁰ You also contend that the public would benefit from the potentially additional revenues from allowing another entity to participate in Auction No. 62 and no one would be harmed by grant of your request because the public notice announcing the status of applicants for Auction No. 62 is not scheduled to be released soon.

Based on the record before us, you have not satisfied the Commission’s criteria for granting a waiver of the short-form application deadline. The Bureaus set the deadline pursuant to Section 1.2105(a)(1).¹¹ The rule’s underlying purpose is to establish a fixed date by which all applicants interested in participating in the auction must submit relevant information necessary to establish applicants’ qualifications to participate in an auction.¹² Using a fixed date provides the Commission with

⁶ *Auction No. 62 Procedures Public Notice*, 20 FCC Rcd at 10502, 10514.

⁷ *Id.*

⁸ *Id.*

⁹ *Auction No. 62 Procedures Public Notice*, 20 FCC Rcd at 10511-12, C-3. Potential bidders who were unable to attend the auction seminar in person could watch and listen to the seminar via a live webcast conducted by the Commission or could subsequently access an audio/visual record of the seminar at the audio/visual archives page of the Commission’s website. *Id.* at 10512.

¹⁰ Waiver Request at 1.

¹¹ 47 C.F.R. § 1.2105(a)(1).

¹² See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, ¶¶ 161-68 (1994) (purpose of short-form application and upfront payment deadlines).

sufficient time to review applications prior to the auction and identifies the pool of potential bidders.¹³ You have not shown that enforcing the deadline in this case would frustrate these purposes, or would not serve them. We note that we have consistently rejected such requests in the past.¹⁴

In addition, you have not demonstrated unique facts or circumstances that merit granting a waiver in this case. You have failed to provide any particular facts or other evidence that would demonstrate that you were prevented from timely submitting a short-form application during the two and one-half week long filing window preceding the August 12, 2005, deadline. You have not alleged any circumstances that are different from those that applied to any Auction No. 62 participant. Importantly, the Commission specifically cautioned applicants to file early and allow adequate time for filing their applications, and that late applications would not be accepted.¹⁵ You have not adequately explained how hurricanes which occurred almost a year before the filing deadline in Auction No. 62 prevented you from meeting the deadline.

Finally, we do not agree that our public interest analysis should change on account of your claim that the addition of one more bidder would potentially increase revenues generated from Auction No. 62. Not only is the public benefit you allege mere speculation on your part, but we believe that any arguable public benefit to be derived from our adding an additional participant to Auction No. 62 would be far outweighed by the public benefit in affording legitimate auction applicants reasonable certainty as to the fair and predictable application of our auction rules and procedures, including enforcement of our deadlines.¹⁶ Such certainty enables applicants to, among other things, plan for the auction. In addition, grant of your request would undermine the Commission's ability to review short-form applications in a timely manner prior to auctions because it would open the door to similar requests by others seeking to participate in an auction after the close of the short form filing window. In short, we believe that the Commission's rules are best served by applying auction deadlines in a fair and consistent manner.

¹³ See Letter to F. Scott Fistel, Esq., Law Office of Fistel & Associates, P.A., from Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, ("Fistel Letter") 19 FCC Rcd 20,517, 20,518-19 (WTB 2004) (denying request for waiver of the short-form filing deadline).

¹⁴ See, e.g., Letter to Alendra Lyons, Lynn Communication, Inc. from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, 16 FCC Rcd 18836, 18837 (2001) (denial of waiver of September 17, 2001, deadline for short-form applications in Auction No. 40 where party claimed the person responsible for submitting its short-form application was "in flight" during the September 11, 2001, World Trade Center and Pentagon attacks and became stranded in Houston, Texas); Letter to David M. Silverman, Esq., counsel to Three Angels Broadcasting Network, Inc. from Mark R. Bollinger, Acting Chief, Auctions and Industry Analysis Division, WTB, 15 FCC Rcd 4521, 4522 (2000) (denial of request for waiver of the short-form filing deadline for Auction No. 28 based on claim that a key manager was traveling the week that short forms were due).

¹⁵ *Auction No. 62 Procedures Public Notice*, 20 FCC Rcd at 10514. Moreover, the Commission undertook numerous steps to publicize Auction No. 62. In addition to posting on its web site, the Commission provided notice of Auction No. 62 in many other fora, including publication in the *Federal Register* and advertisements in the trade publications *Radio Business Report* and *Radio World*. Also, the Commission held a bidders' seminar, which was available over the internet, informing the general public of, among other things, the due date for short forms in Auction No. 62.

¹⁶ See, e.g., *Fistel Letter*, 19 FCC Rcd 20517, 20518-19 (WTB 2004) ("The Commission's rules are best served by applying auction deadlines in a fair and consistent manner."); see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2375-81 ¶¶ 161-88 (1994) (purpose of short-form application and upfront payment deadlines).

In view of the foregoing, your request for a waiver of the short-form application filing deadline for Auction No. 62 is denied. This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.¹⁷

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

¹⁷ 47 C.F.R. § 0.331.